SUPREME COURT OF THE UNITED STATES.

No. 203.—October Term, 1930.

David Burnet, Commissioner of Internal Revenue, Petitioner, *vs.* William Hobart Porter and Andrew W. Porter, Executors of the Estate of William W. Porter, Deceased.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 13, 1931.]

Mr. Justice Sutherland delivered the opinion of the Court.

William W. Porter was a subscriber in the sum of $75,000 to the fund described in our opinion handed down this day in No. 199, *Burnet* v. *Houston, ante,* p. —. The facts in the present case are the same except that the Commissioner of Internal Revenue first approved the deduction and allowed a claim for refund of the proportional part of the tax, and then some time later reopened the case, disallowed the deduction and redetermined the tax. The court of appeals sustained the power of the commissioner upon the authority of *McIlhenny* v. *Commissioner of Internal Revenue,* 39 F. (2d) 356; and was clearly right in doing so. That court, however, upon the main point, following its decision in the *Houston* case, reversed the determination of the Board of Tax Appeals in favor of the government. 39 F. (2d) 360. This is contrary to our decision in No. 199, and upon that authority the judgment is

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.